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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,607	05/25/2005	Emmanuel Martin	HP/15-22797/MA 2231/PCT	2273
324	7590	05/28/2008	EXAMINER	
JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			PEZZUTO, HELEN LEE	
			ART UNIT	PAPER NUMBER
			1796	
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			05/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/536,607	Applicant(s) MARTIN ET AL.	
	Examiner Helen L. Pezzuto	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,9-18 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-2, 4-21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/25/05, 7/31/06, 9/18/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the species for the monomer building blocks of the polymer in the reply filed on 9/18/08 is acknowledged. The traversal is on the ground(s) that as long as the unity of invention has been accepted in the international phase, restriction is not proper. This is not found persuasive because the species within the invention do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, a special technical feature which the claims share does not define a contribution over the prior art. For example, the polymer which is considered as the special technical feature lacks novelty or an inventive concept in view of US 4,806,345, US 5,114,600, and EP 494554 A1.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 7-8, and 19-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/18/07 wherein both a cationic and a nonionic monomer species were elected to be

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present. Thus, constitutes a copolymer product containing both monomer units.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 9-14, 16-18, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al. (US-223).

US 6,864,223 B2 to Smith et al. discloses a fabric conditioner composition comprising a fabric softener, a polymeric thickener and other conventional additives. Prior art polymeric thickener is derived from 5-100 mol% of a cationic vinyl monomer, 0-95 mol% of acrylamide, and 70-300 ppm of a difunctional vinyl crosslinking monomer, as those described in US 4,806,345 to Bhattacharyya which was incorporated by reference (see abstract; col. 5, lines 23-

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41). Suitable cationic monomer and crosslinking monomer include methyl chloride quaternary ammonium salt of dimethylaminoethyl (meth)acrylate, and methylene bisacrylamide (see US-345, col. 3, lines 12-39; col. 5, lines 1-8, Tables I and II). Prior art further suggest to incorporate conventional additives such as cationic softener, perfume, and chelating compound (col. 3, lines 38-61; col. 5, line 66 to col. 6, line 19; col. 7, lines 8-67). Thus, anticipating the present claims.

5. Claims 1, 9-18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Biggin et al. (US-600).

US 5,114,600 to Biggin et al. discloses a fabric conditioning formulation comprising a crosslinked cationic polymer, a cationic softener, and conventional additives (see abstract). Specifically, prior art teaches a cationic polymer derived from quaternized dialkylaminoalkyl (meth)acrylate, acrylamide, and 5-45 ppm of a crosslinking agent such as methylene bisacrylamide (col. 3, lines 1-20). Furthermore, chain transfer agent was suggested to control the degree of crosslinking and branching in the resultant polymer (col. 4, lines 1-29). Thus, anticipating the present claims.

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6. Claims 1, 9, 11-14, 16-18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 494 554 A1.

EP-554 discloses a softener composition comprising a cationic copolymer and conventional quaternary ammonium softener. In a preferred embodiment, prior art cationic copolymer comprises a cationic monomer such as dimethylaminoethylacrylate quaternized with methyl chloride (CMA), and acrylamide (AAM), crosslinked with 100 ppm of bisacrylamidoacetic acid (page 2, lines 41-48; working Examples). Thus, anticipating the present claims.

Claim Rejections - 35 USC § 103

7. Claims 2, and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US-223) or Biggin et al. (US-600) or EP-5564 for the reasons detailed in the preceding paragraphs and further in view of the following remarks.

Prior art references discussed above are silent regarding the particles size expressed in the present claims. Being silent prior art is generic to any particles size, inclusive of applicant's, absent showing of unexpected results commensurate in scope with the recited particles size. In any event, Smith et al. of US-223 and EP-554 disclose water-in-oil emulsion polymerization in the

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preparation of the copolymer. Biggin et al of US-600 specifically teaches control of particles size in emulsion or reverse phase polymerization by controlling the shear applied to the monomers and by using different emulsifying agent (col. 4, lines 43-62). Accordingly, it would have been obvious to one having ordinary skill in the art to determine the optimum particle size suitable for its utility in fabric softener formulations, motivated by the reasonable expectation of success as taught. Such discovery of an optimum value of a result effective variable would involve only routine skill in the art. Thus, rendering obvious the present claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen L. Pezzuto whose telephone number is (571) 272-1108. The examiner can normally be reached on 8 AM to 4 PM, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Helen L. Pezzuto/
Primary Examiner
Art Unit 1796

hlp